



600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

George Kostolampros

T 202.344.4426
F 202.344.8300
gkostolampros@venable.com

August 7, 2020

VIA ECF

The Honorable Joseph F. Bianco
Visiting Circuit Judge (sitting by designation in below referenced matter)
U.S. Court of Appeals for the Second Circuit
100 Federal Plaza
Central Islip, New York 11722

Re: **United States of America v. Kenner, Cr. No. 13-607 (JFB)**

Dear Judge Bianco,

We write on behalf of Danske Bank A/S London Branch (“Danske”) in reply to the government’s August 7, 2020 letter [Dkt. No. 890] in which the government requests, with respect to its cross-motion for summary judgment and its opposition to Danske’s motion for summary judgment (1) a month extension, and (2) a waiver of the page limitations. The purported basis for the requested delay is that the government received 1,000 pages of documents yesterday—11 days prior to the date its opposition and cross-motion are due. The government’s request should be denied.

First, Danske’s August 6, 2020 production—which Danske provided at the Court’s suggestion during the July 8, 2020 hearing that Danske produce to the government any materials it had in its possession that were responsive to the government’s relevant requests, Hr’g Tr. at 7:24-8:14—consists of 35 documents (of 981 pages). Included among the 35 documents are the unredacted versions of 3 repurchase agreement related contracts the government has had since April 15, 2020; the redactions, in each instance, were limited to a single page. It is simply not credible to believe that the government requires an additional month to review 35 documents, most of which are less than 10 pages and three of which it has had for almost four months.

Simply put, given the limited size of Danske’s production and that the government still has nearly two weeks to file its opposition and the cross motion for which it has already received a 2-week extension¹, the inescapable conclusion is that the government’s letter is just the latest in its

¹ During the June 10, 2020 hearing, the Court ordered the government to file its opposition to Danske’s motion for summary judgment 45 days after June 19, 2020, the date Danske’s brief was filed. Under Rule 6(a)(1) of the Federal Rules of Civil Procedure, August 3 is 45 days from June 19, 2020 although, in justifying a request for a

The Honorable Joseph F. Bianco

August 7, 2020

Page 2

now-lengthy history of attempts at delaying resolution of Danske's claim. The government's continued efforts at delay make no sense given that the government is supposed to avoid harming third-parties. Continued delays *jeopardize* this. Indeed, as Danske has repeatedly warned, time is of the essence to avoid harm to Danske and third-parties. It is simply inexplicable that the government apparently has no concern about preventing harm to innocent third-parties, including Danske.

Second, the government's request for a waiver of the page limitations is unjustified. Contrary to the government's suggestion that the issues are "complicated," the issues before the Court are simple—whether Danske provided value for the interests it holds and whether it was reasonably without cause to know that the Resort Property and Equity Interests were subject to forfeiture when it acquired its interests. Danske addressed these two legal issues in 24 pages, and the legal issues that the government is briefing—in its opposition and its cross-motion—are no different. Casting the issues as "complicated" does not justify more than doubling the government's allotted pages particularly when the government can contest material facts in a statement of allegedly disputed facts. Ultimately, the government's statement to the Court that its briefing is expected to total 60 pages leads Danske to conclude that the government's briefing must be nearly complete, which further undercuts the purported rationale for the government's request for yet another delay.

* * * *

As set forth above, Danske respectfully requests that the Court deny the government's requests and move forward with the summary judgment briefing as scheduled.

We thank the Court for its continued attention to this matter.

Respectfully,



George Kostolampros
Doreen S. Martin
Xochitl S. Strohbehn

cc: All parties of record via ECF
Thomas McC. Souther, Esq. and Kevin P. Mulry, Esq. (by email)

delay in the briefing schedule, the government errantly told the Court during the July 8, 2020 hearing that its opposition was due on August 10, 2020. July 8, 2020 Hr'g Tr. at 19:1-7.